

499-A, which state that the “toll service revenue categories” are to capture revenue for “telecommunications services...that enable customers to communicate outside of local exchange calling areas.” *See, e.g. 2003 Instructions at 20 (see Exhibit 12 hereto (emphasis added)); 2004 Instructions at 22 (Exhibit 10) (emphasis added).* Moreover, the Instructions state that revenues from “information services offering a capability for generating, requiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications are not included in the universal service or other fund contribution basis.” *See 2003 Instructions at 21; 2004 Instructions at 23.*

The Commission has stated that a carrier may report revenues from “bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices.” *See Policies and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, Report and Order, CC Docket No. 96-61, 16 FCC Rcd 7418 (2001).* That is precisely what Intellicall did in removing from prepaid card revenues those revenues relating to the use of its computer facilities and platforms, and isolating the remaining “telecommunications” revenue.

In any event, even if the revenues for the maintenance and service fees are determined to be telecommunications revenues, they should be treated as intrastate revenues because they relate to computer database services performed wholly within one state and not to the transmission of messages between states.

## 2. "Breakage"

*Prepaid cards sometimes expire while there is still some call time remaining on the card.* The value of the remaining time at expiration is known as "breakage." Although that revenue clearly does not result from the provision of "telecommunications" or "telecommunications services," USAC-IAD concluded that "prepaid breakage should be included in line 411 of the FCC Form 499-A." *See Audit Report* at 4. USAC-FOM stated that breakage "is a termination charge" for PINs or cards that expire with some balance still outstanding on them, and concluded that such "termination charges are considered gross revenue and can not be deducted from line 411." *Id.* at 11-12. The result of USAC's determination is that revenue from "breakage" -- which results when the cardholder does not use the card for "telecommunications" services -- is deemed to be "telecommunications" revenue susceptible to USF contribution obligations.

In reaching that conclusion, USAC-FOM cited the instructions to "column (a) - total revenues" in Block 3, Block 4-A and Block 4 of the FCC Form 499-A. *See Audit Report* at 11-12. However, that portion of the instructions relates to "gross revenues from all sources, including non-regulated and non-telecommunications services," and including Line 418, which concerns non-telecommunications revenue. *See 2003 Instructions* at 16; *2004 Instructions* at 17. That does not mean that such "non-telecommunications services" are to be included on Line 411 and counted toward USF revenues. The specific instructions for Line 411 say nothing about such "termination" charges in the context of prepaid card service revenues. By way of comparison, the instructions for prepaid *wireless* service revenues state that Line 409 should contain end-user "revenue attributable to activation and daily or monthly access

charges” and “prepaid wireless service revenues attributable to airtime should be reported on Line 410.” The Instructions do not include any specific requirement to include breakage or “termination” charge revenue on prepaid wireless services in the USF contribution base. Inclusion of that revenue for prepaid wireline or card services is inequitable, discriminatory and provides a competitive advantage for wireless providers.

Finally, if the “breakage” is determined to be “telecommunications” revenue, it must be treated as intrastate revenue and not included in the calculation of USF contribution obligations. The breakage revenue clearly does not come from the transmission of interstate messages by the customer, but rather from the expiration of the card, which occurs at a particular time and place within one state.

### 3. Contra Taxes

USAC-IAD concluded that contra taxes should not be deducted from prepaid card revenue. *See Audit Report* at 7-8. Specifically, USAC-IAD disallowed ILD’s deduction on the 2003 Form 499-A for contra taxes, which are federal excise taxes and state sales taxes remitted to the appropriate federal or state tax authorities. *Id.*; *see also* Brooks Declaration at ¶12. USAC-IAD acknowledged that the Instruction’s state that “carriers should exclude taxes and any surcharges that are not recorded on the company’s books as revenues but which instead are remitted to governmental bodies,” but disallowed the deduction because ILD had “deducted this amount from gross revenues reported rather than just excluding it.” *Id.* at 10. USAC-FOM further confused the issue by stating that contra taxes “are considered expenses of ILD and should *not be included or deducted* in any gross revenues reported by ILD.” *Id.* at 11 (emphasis added). Intellicall agrees with USAC-FOM that these taxes “should not be

included” in gross revenues, but USAC-IAD has disallowed the elimination of those amounts from ILD’s revenue base for USF contribution purposes.

#### 4. Zero-Plus Revenue Issues

USAC-IAD concluded that ILD had improperly deducted “bad debt, premise-imposed fees, dialaround surcharges and international revenue that was assumed to be internationally originated and terminated” from Line 413 on FCC Form 499-A’s for 2003 and 2004. *See Audit Report* at 12. At the outset, ILD acknowledged that it had erred with respect to the reporting of international revenues and it concurred with USAC-IAD’s adjustment with respect to that issue. *Id.* at 15-16. However, Intellicall believes that the remaining deductions are appropriate and consistent with the statutory limitation that USF contributions are to be based on “telecommunications” revenues and the requirement that intrastate revenues be excluded.

USAC-IAD found that Intellicall had improperly deducted revenues relating to premise imposed fees (“PIF”) and dialaround surcharges from the gross revenue reported on Line 413 of the 2003 and 2004 FCC Forms 499-A. *See Audit Report* at 13. USAC-IAD stated that the PIF and dial around compensation revenues “are surcharges to the customer” and that the Instructions to FCC Form 499-A state that “all surcharges not remitted to third party non-government entities should be reported in Line 413 of the Form.” *See Audit Report* at 16. USAC-FOM said exactly the opposite -- that because the surcharge “is for a non-government third party, it must be reported as revenue on Line 413.” *Id.*

Dialaround compensation, or payphone surcharges, are charges that Intellicall is required by statute and FCC regulation to pay to the owners of pay telephones to compensate them for the customer’s use of the payphone. The surcharge is separately tariffed from

Intellicall's telecommunications charges and applies to the use of customer premises equipment (the payphone), not to the transmission by ILD of the customer's information from point to point. Moreover, both USAC-IAD and USAC-FOM have ignored the relevant portion of the Instructions with respect to these revenues. The Instructions state that surcharges "billed to the customer and either retained by the filer or remitted to a non-government third party *under contract*" are to be included as gross revenues. *See* 2003 Instructions at 17; 2004 Instructions at 17 (emphasis added). However, payphone surcharges are not paid to third parties "under contract," but rather by specific directive of Congress and the Commission. *See* 47 U.S.C. §226; 47 C.F.R. §64.1310. Consequently, the dial around surcharge revenue must be excluded based on the plain language of the Instructions.

PIF charges are similar to dial around charges in that they are fees paid by ILD to the owners of telephone customer premises equipment located at hotels, prisons and other locations. In essence, they are to compensate the owner of customer premises equipment for allowing the customer to use that equipment to place a call, not revenues from the transmission of the call. Revenues for customer premises equipment are to be excluded from "telecommunications" revenues. *See* 2003 Instructions at 22; 2004 Instructions at 23-24. In any event, even if PIF surcharge revenues are deemed to be "telecommunications" revenue, they are wholly intrastate in nature because they are derived from the use of customer premises equipment at a specific location within a particular state, not from the interstate transmission of the customer's call.

5. USF Contribution Revenue

ILD acknowledged to USAC-IAD that it billed USF fees to its customers during 2002 and 2003, but did not include the amounts received from customers on Line 403 of the FCC Form 499-A for those years. However, upon review of the instructions and relevant forms with USAC-IAD, ILD recognized that the instructions required the fees to be reported on Line 403. *See Audit Report* at 17-18. Beginning in calendar year 2003, the FCC added a “circularity factor,” in recognition of the fact that including these amounts as revenues results in the assessment of USF fees on revenue collected to pay USF rather than on revenue for “telecommunications” or “telecommunications services.” *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review*, 17 FCC Rcd. 24952 (2002) at ¶35.

ILD suggested that exclusion of these fees from gross revenues would be more consistent with the statutory directive that USF obligations be based on “telecommunications” revenues. Absent total exclusion, ILD suggested that the circularity factor should apply to the 2003 Form 499-A as well as the 2004 Form because the same concerns that led to adoption of a circularity factor on the 2004 Form applied equally to 2003. USAC-FOM did not dispute the substance of ILD’s comments but indicated that it was powerless to act upon them, and stated that ILD needed “to address its comments regarding circulating to the FCC” (*Audit Report* at 18), which is precisely what ILD is doing now.

D. The LIRE Exception and USAC’s Application of It Are Competitively Harmful and Discriminatory.

Section 54.706(c) of the Commission’s rules states that a contributor whose interstate revenues “comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues” shall contribute to USF “based only on such entity’s interstate

end-user telecommunications revenues.” Many resellers and other providers have structured their operations to take advantage of this “LIRE” exception in order to exclude their international revenues from USF contribution obligations. ILD provides international telecommunications services in competition with those entities. As the USF contribution rate has increased to over 10 percent, and international calling rates and profit margins have fallen substantially, USF contribution obligations have become an increasingly greater competitive factor in the marketplace.

Because USAC has stated that the LIRE rule is applied based on “traffic patterns of all end-user telecommunications services provided by company as a whole and not on a customer or a product basis” (see *Audit Report* at 10-11), ILD has been required to pay USF contributions on all interstate and international revenue, while its competitors (including some wholesalers that have purchased services from ILD) have used the LIRE exception to avoid contributions on their international revenues. As a result, if the same call is placed from the United States to Mexico, the revenue from that call is subject to USF contribution obligations if the call is placed via ILD’s services, but not if it is placed via the service of a LIRE-eligible competitor. That result is inequitable, discriminatory and competitively disastrous, and it was one of the factors that drove ILD out of the prepaid card business at the end of 2004.

**E. Wholesale Unbundled Revenue Issues**

ILD provided to USAC-IAD a list of the resale providers to whom it sold wholesale minutes on its switch in 2002 and the carriers to whom it sold wholesale minutes on its switch in 2003. The list included company names, addresses, telephone numbers and contact persons for reach of those resale providers. Those companies obtained bulk minutes of switch time

from ILD and used those minutes to create their own prepaid calling card platforms and distribute their own calling cards. ILD has no control over the distribution or sale of the cards by those resale providers and merely bills the reseller for usage on the switch. ILD took reasonable steps to ensure that each of these resellers incorporated ILD's services into its own telecommunications offering and could reasonably be expected to contribute to USF based upon its own end-user service revenues. Among other things, ILD included contractual terms for certain customers, wrote letters to others and communicated verbally with others to ensure that they understood their USF obligations. *See Brooks Declaration at ¶11.*

However, USAC-IAD determined that none of the resale carriers actually contributed to USF as required. As a result, USAC-IAD concluded that all unbundled wholesale revenue that ILD had reported as reseller revenue in Block 3 of FCC Form 499-A "should be reported [as end-user revenue] on Line 414 of the Form 499-A." *See Audit Report at 19.* Because ILD could not provide traffic studies for this unbundled revenue, USAC-IAD "attempted to determine a reasonable allocation percentage" by using the wholesale prepaid calling card traffic as a surrogate "because these two lines of business follow similar traffic patterns." *Id.* On that basis, USAC-IAD concluded that "the interstate percentage should be reported at 15 percent in 2003 and 18 percent in 2004 and the international percentage should be reported at 79 percent in 2003 and 73 percent in 2004." *Id.* In short, USAC-IAD and USAC-FOM have determined that: (a) ILD is financially responsible for the failure of the resellers to meet their USF obligations; and (b) ILD's wholesale prepaid calling card traffic is an appropriate surrogate for the traffic allocation of those resellers, without regard to the identity and business plans of the particular resellers.



The approach taken by USAC-IAD is inequitable, discriminatory and competitively unfair. The Instructions define a reseller as “a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications services into its own telecommunications offerings; and (2) *can reasonably be expected to contribute* to federal universal service support mechanisms based on revenues from such offerings when provided to end users.” See 2003 Instructions at 16; 2004 Instructions at 16 (emphasis added). ILD made reasonable efforts to assure that the wholesalers with whom it dealt intended to use the services obtained from ILD to offer their own telecommunications services and could “reasonably be expected” to file and pay any USF fees which were due on their business. To the extent that those entities did not pay into the USF as required, appropriate action should be taken against them. In fact, ILD provided USAC with names, addresses and contact information for those entities. See Brooks Declaration at ¶11. However, ILD respectfully suggests that requiring it to make USF contributions on behalf of resellers who have failed to do so is inequitable and discriminatory and places ILD at a competitive disadvantage in the marketplace.

Moreover, ILD should not be required to treat those revenues as end-user revenues and to pay USF contributions on all such revenues based on a reseller’s failure to pay, if the reseller itself would have been either: (a) exempt from payment obligations under Section 54.708 as a *de minimis* contributor; or (b) entitled to the LIRE exception based on the 12% threshold in Section 54.706(c) of the Rules. In that respect, it is particularly inequitable for USAC to use surrogate traffic reports to impose upon ILD contribution obligations of other carriers who have not paid USF contributions, but who may be exempt in whole or in part from making such contributions on the basis of their traffic patterns.

**F. Conference Service Revenue Issues**

ILD provides a variety of enhanced conference calling services. USAC-IAD and USAC-FOM have agreed with ILD that these are enhanced services and are not subject to USF charges. However, they stated that the revenues for the basic telecommunications service component of those enhanced services should be broken out and included for purposes of calculating USF contributions. USAC-IAD used ILD traffic studies for a portion of 2002 as a surrogate to determine that ILD should report 90% of all conference service revenues as interstate telecommunications revenues and 1% as international revenues during 2003. It also determined that ILD should report 95% of all conference revenues as interstate telecommunications revenues and 0% as international revenues during 2004. *See Audit Report* at 21-22. USAC-FOM agreed with ILD's position, but stated that "ILD needs to breakout the revenues for "basic toll teleconferencing and report that revenue on line 314 and 417," and that revenue from "all of the additional services can be reported on line 418 and [is] not subject to USF." *Id.* at 23.

ILD contends that the basic interstate toll portion of the conference calling revenue is de minimis, should be excluded for USF contribution purposes, and is excluded by the majority of its competitors providing similar conference calling services. Although USAC-IAD did not seek guidance from the Commission on this issue, ILD suggests that, if basic interstate toll revenues from these services are to be included, FCC guidance is necessary in order to ensure that contributions are collected from the providers of these conferencing services on an equitable, non-discriminatory and competitively neutral basis. For example,

there are no clear guidelines on how to allocate basic toll conference call revenue where there are multiple in-state parties on the call and only one out-of-state party.

**G. One Plus Revenue Issues**

**1. Amounts Unpaid by Resellers**

USAC-IAD determined that ILD did not include revenue from FBN, a wholesale customer of ILD's, on Line 414 of FCC Form 499-A. ILD understood that FBN had obtained a USF filer identification number and, therefore, had not reported the FBN revenues as end-user revenues. See Brooks Declaration at ¶11. However, USAC advised that FBN never made its USF contributions despite the fact that FBN "had no legitimate reason not to be a current contributor to USF." See *Audit Report* at 30. Consequently, USAC-IAD determined that ILD must treat all FBN revenue as end user revenue subject to USF contribution obligations. In short, USAC-IAD requires ILD to pay because FBN did not.

Although USAC-IAD and USAC-FOM state that now "USAC and the FCC have developed a website which lists all contributors to the USF" so that companies like ILD can determine "the contribution status" of the reseller companies with whom they are dealing, that resource did not exist in 2002 and 2003. Nevertheless, ILD took steps to determine that FBN could "reasonably be expected" to file and pay any USF fees which were due on its business, including making sure that FBN had registered with USF. Again, to the extent that FBN did not pay into the USF as required, appropriate action should be taken against FBN. However, ILD respectfully suggests that requiring it to make USF contributions on behalf of FBN under these circumstances is inequitable and discriminatory, places ILD at a competitive disadvantage in the marketplace, and rewards entities like FBN for their non-compliance.

The competitive effects of this approach are devastating in the marketplace. ILD must compete with certain carriers that are exempt from USF contributions based on the de minimis exemption or are permitted to exclude their international revenues from their contribution base under the LIRE exception, while ILD must pay on all of these revenues. That alone appears to be inconsistent with the statutory directive that such contributions be equitable and non-discriminatory. Requiring ILD to contribute based not only upon the revenues from its end user customers, but also upon the revenues from resellers that failed to pay into the USF (when there is no reason for failure to pay), is completely inequitable, discriminatory and competitively disastrous.

## **2. PICC Charges**

USAC-IAD also determined that ILD had deducted Presubscribed Interexchange Carrier Charges ("PICC") from Line 414 and failed to include those revenues in Line 405. *See Audit Report* at 31. PICC revenue is revenue that ILD obtains from its customers and pays to the local exchange carrier ("LEC") to compensate the LEC for directing "one-plus" calls from the customer to the customer's presubscribed interexchange carrier. Like dial around compensation, these fees are paid to the LEC not under any contract, but rather pursuant to FCC regulation. See 47 C.F.R. §69.153. According to the Instructions to the Form 499-A regarding surcharges, such amounts should be included in revenues only when paid to a non-governmental third party "under contract." Although USAC-IAD stated that "these charges should have been reported in Line 405" of the FCC Form 499-A, the Instructions to the Form state that revenues in that Line "should include charges to end users *specified in access tariffs*, such as tariffed subscriber line charges *and PICC charges levied by a local exchange carrier*

on customers that are not presubscribed to an interexchange carrier (i.e. no-PIC customer).”  
*See 2003 Instructions at 19-20.* ILD is not a local exchange carrier and does not maintain access tariffs. *See Brooks Declaration at ¶13.*

**III. Delegation of the Audit Function to USAC Without Established Procedures or Guidelines Is Improper.**

Section 54.707 of the Commission’s states that the Administrator “shall have authority to audit contributors and carriers reporting data to the administrator.” 47 C.F.R. §54.707. The “administrator” is USAC,<sup>12</sup> a private entity whose employees are not federal officers or federal employees. USAC is a not-for-profit corporation organized under the laws of Delaware and is a wholly-owned subsidiary of the National Exchange Carrier Association, Inc. (“NECA”).<sup>13</sup> No contract, programming agreement or memorandum of understanding exists between the FCC and USAC. Under these circumstances, the FCC’s delegation of the audit function to USAC without establishing appropriate procedures and guidelines is improper.

**A. USAC’s Role As Administrator Violates the Government Corporation Control Act**

USAC’s website states that the corporation was created in 1997 by NECA “at the direction of the FCC,” and USAC has acknowledged that it “was created with the sole purpose of serving as the independent neutral administrator of the USF.” *See Exhibit 13 hereto; see also USAC Comments at 2.* However, the Government Corporation Control Act states that a

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<sup>12</sup> The FCC appointed USAC the “permanent” administrator of the Universal Service Fund in 1998, subject to a “one-year review.” That review was never performed. *See USAC NPRM at ¶5.*

<sup>13</sup> NECA is an association of local exchange carriers. Because its members are all local exchange carriers, most of its Board members are LEC representatives, and it has taken advocacy positions in various proceedings at the FCC supporting LECs, the Commission and the Joint Board on Universal Service were concerned that it would be perceived as unduly biased toward LECs and would not consider NECA for the role of permanent USF Administrator without fundamental changes. *See e.g. Federal-State Joint Board on Universal Service (First Report and Order)*, 12 FCC Rcd. 8776 (1997) at ¶¶863-864.

federal agency “may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.” 31 U.S.C. §9102. Although the Telecommunications Act of 1996 provided the Commission with authority “to create or designate” one or more impartial entities to administer *telecommunications numbering* (See 47 U.S.C. §251(e)(1)), Section 254 of the Act provides no similar authority with respect to the provision of universal service or the administration of the universal service fund.

Although NECA actually established USAC, the USAC website makes it clear that NECA did so “at the direction of the FCC.” See Exhibit 13. Moreover, USAC was required by the FCC to submit its bylaws to the FCC for approval. See *Changes to the Board of Directors of the National Exchange Carrier Association, and Federal State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (“*USAC Appointment Order*”) at ¶25. In any event, the Government Accounting Office (“GAO”) has stated that the prohibitions of the Government Corporation Control Act “could not be avoided by directing another organization to act as the incorporator,” and that “the Control Act prohibits an agency from creating or causing creation of a corporation to carry out government programs without explicit statutory authorization.” See *Letter from the Office of General Counsel, GAO, to the Honorable Ted Stevens, United States Senate* (Feb. 10, 1998). That letter specifically addressed the creation of two additional corporations by NECA at the direction of the FCC, the Schools and Libraries Corporation and the Rural Health Care Corporation, and found that their creation violated the Government Corporation Control Act because Congress had not explicitly directed the Commission to establish those corporations. *Id.* at 4-7.

Likewise, there is no “law of the United States” authorizing the formation of USAC for the “sole purpose” of acting as the USF Administrator. To the contrary, the inclusion of such express authority in Section 251 for numbering administration and its omission from Section 254 indicates that Congress did not intend to authorize the creation of such a corporation to administer the universal service support mechanisms in Section 254. In fact, in 1998 the Commission specifically requested that Congress provide “specific statutory authority, similar to that provided in connection with numbering administration, to create or designate, on or before January 1, 1999, one or more entities such as the Universal Service Administrative Company, to administer the federal universal service support mechanism.” *See Report to Congress*, 13 FCC Rcd. 11810 (1998) at ¶15.

That authority apparently has not been provided. *See, e.g.* “Telecommunications: Application of the Antideficiency Act and other Fiscal Controls to FCC’s E-Rate Program,” GAO-05-546T, rel. April 11, 2005 at 6 (“USAC is not part of FCC or any other government agency; is not a government corporation established by Congress; and no contract or memorandum of understanding exists between FCC and USAC for the administration of the E-Rate program.”). Moreover, as GAO has recognized, the FCC “has never conducted a comprehensive assessment of which federal requirements, policies and practices apply to the [E-Rate] program, to USAC, or to the Universal Service Fund itself.” *See, e.g.* “Waste, Fraud and Abuse Concerns with the E-Rate Program,” Subcommittee on Oversight & Investigations, Bipartisan Staff Report for the Use of the Committee on Energy and Commerce, October 18, 2005 (“*Oversight Subcommittee Report*”) at 46, citing “Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program,” GAO-050151, rel. Feb. 2005. In fact, the Oversight Subcommittee

Report expressly stated that “Congressional guidance may be necessary expressly to make USAC the permanent administrator....” *Id.* at 47, n.106. Absent such Congressional authorization, USAC’s conduct of contributor audits in connection with its role as administrator of the USF program violates the Government Corporation Control Act and is unlawful, particularly in the absence of proper oversight and guidance by the Commission.

**B. USAC’s Ownership By NECA Creates An Inherent Conflict In USAC’s Audit Function**

Although USAC and NECA do not share common directors or personnel, USAC remains a wholly-owned subsidiary of NECA. There is no dispute that NECA and its members local exchange carriers “are stakeholders in the universal service programs.” *See USAC Comments* at 52. Among other things, USAC relies on NECA to provide it with certain information pursuant to Part 36 of the rules. In addition, individual LEC members of NECA are eligible to receive, and do receive, universal service support payments from USAC. The ownership relationship between NECA and USAC appears to contravene the requirements of objectivity and independence established under the Generally Accepted Government Auditing Standards (“GAGAS”). *See, e.g. GAO Guidance on Auditor Independence Requirements*, rel. July 2, 2002 (“auditors are to be independent in both fact and appearance”).

The plan by which the FCC made USAC the permanent administrator of the USF program recommended complete divestiture of USAC from NECA. The FCC had pledged to review the divestiture issues one year after USAC became the Administrator, but the promised review never happened. *See Oversight Subcommittee Report* at 47. The current ownership relationship between NECA and USAC appears inconsistent with the Commission’s determination that the administrator should be independent and not affiliated of any provider of



telecommunications services. *See, e.g.* "Waste, Fraud and Abuse Concerns with the E-Rate Program," Subcommittee on Oversight & Investigations, Bipartisan Staff Report for the Use of the Committee on Energy and Commerce, October 18, 2005 at 47 (referring to "the potentially conflicted relationship of USAC and NECA," including the fact that "while NECA is the sole shareholder of USAC, it is also a major subcontractor for USAC that administers part of the fund."). Contributors are entitled to an unbiased evaluation of their contribution performance, and the existing "potentially conflicted" relationship between USAC and NECA undermines the expectation of objectivity and independence with respect to the audits performed by USAC-IAD, particularly in the absence of appropriate guidance from the Commission.

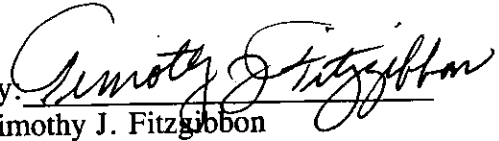
#### CONCLUSION

ILD and Intellicall respectfully request that the Commission grant review of the USAC decision reflected in the January 31, 2006 letter from USAC and the many decisions and interpretations made by USAC-IAD in the course of conducting the audit and preparing the Audit Report. The procedural issues raised herein should be addressed in order to provide appropriate guidance to both USAC and auditees with respect to future contributor audits. The substantive issues raised herein should be resolved for the same reason, and so that ILD may prepare and submit a single set of revised FCC Form 499-A submissions rather than face multiple refilings in the event that these issues are resolved in a piecemeal fashion.

March 31, 2006

Respectfully submitted,

ILD TELECOMMUNICATIONS, INC.  
INTELLICALL OPERATOR SERVICES, INC.

By: 

Timothy J. Fitzgibbon

NELSON MULLINS RILEY & SCARBOROUGH

101 Constitution Avenue, N.W.

Suite 900

Washington, D.C. 20001

(202) 712-2800

*Their Attorneys*

## **EXHIBITS**

- 1 November 2, 2004 USAC Letter
- 2 August 16, 2005 USAC E-mail and DEWS
- 3 September 16, 2005 ILD Response to DEWS
- 4 January 24, 2006 USAC-IAD E-mails
- 5 January 30, 2006 USAC-IAD E-mail and Draft USAC  
Audit Report
- 6 January 30, 2006 USAC Letter and Representation Letter
- 7 January 31, 2006 USAC Billing and Collection  
Department Letter
- 8 March 2, 2006 USAC Billing and Collection Department  
Letter
- 9 Declaration of H. Edward Brooks, Jr.
- 10 2004 Form 499-A and Instructions
- 11 Sample calling cards
- 12 2003 Form 499-A and Instructions
- 13 USAC Website Pages

# **EXHIBIT 1**



## Universal Service Administrative Company

Wayne Scott  
Vice President, Internal Audit

November 2, 2004

Dennis Stoutenburgh  
Intellicall Operator Systems  
16200 Addison Road Suite 100  
Addison, Texas 75001

Dear Mr. Stoutenburgh:

Intellicall Operator Systems, Filer ID# 807204, has completed a FCC Form 499-Telecommunications Reporting Worksheet on an annual basis. Pursuant to 47 C.F.R. § 54.707, USAC, as the Administrator, has the authority to audit contributors and carriers reporting such data.

USAC's Internal Audit Division will perform audit procedures on the data that Intellicall Operator Systems, Filer ID 807204, reported on FCC Form 499-A (used for the purposes of calculating contributions to the universal service support mechanisms) for Years 2003 and 2004. This audit will be conducted by Caroline Ashe-Donnem in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

The purpose of the audit is to determine the adequacy of the process used to report revenue and other information on the form 499-A. In addition, we will audit the data reported to ensure the numbers are accurately stated.

In order to assist USAC in performing this work in an effective and efficient manner, the following data requests are required to be completed by Intellicall Operator Systems and sent to USAC based on the *Project Timetable* (refer to **Exhibit F**):

- **Exhibit A: *Form 499-A Questionnaire*** – list of specific questions related to the Form 499-A reporting requirements;
- **Exhibit B: *Data Collection Template*** - detailed list of items requested from contributor;
- **Exhibit C: *Contributor Acknowledgement Form*** - contributor signed acknowledgement of receipt of instructions to be returned to USAC;
- **Exhibit D: *Representation Letter*** – contributor representation of the completeness and accuracy of the information provided to USAC;
- **Exhibit E: *Templates*** – provides format for documenting items requested in the *Data Collection Template*.

↳ NOT included in package

In mid- January, we plan to conduct an on-site visit at the Intellicall Operator Systems location where records are maintained and process owners supporting the FCC Form 499-A reporting are situated.

Throughout the audit process, we will provide you with updates regarding the status of our audit. We will also notify you of any exceptions and give you the opportunity to comment. At the conclusion of the audit, we will advise you of the audit results.

The time required to complete the audit will depend on the quality of the information we are auditing and the availability of the required staffing. Upon receiving the requested information, we would like to schedule a conference call to discuss the information.

Should you have any questions, please feel free to contact me at (202) 776-0200. Your cooperation is greatly appreciated in this matter.

Sincerely,



Wayne Scott  
Vice President Internal Audit  
USAC Internal Audit Division

Please provide copies of the documentation sent to the following:

Ms. Caroline Ashe-Donnem  
USAC  
Internal Audit Division  
2000 L Street, NW, Suite 200  
Washington, DC 20036  
[cashedonnem@universalservice.org](mailto:cashedonnem@universalservice.org)

Note: Per 11/24/04 telcon w/ Ms. Ashe-Donnem, the  
deadline for completed templates will be  
extended to 1/6/04. *MSC*  
11/24/04

## **EXHIBIT A: FORM 499-A Questionnaire**

1. Does Intellicall Operator Systems have multiple filer ID#s? If yes,
  - a. List all the filers ID#s and the corresponding entity names;
  - b. Indicate if Intellicall Operator Systems maintains separate books and records for each filer ID#.
2. Has there been a change in the "Legal Name of Carrier" or Mergers/Acquisitions pertaining to the 2003 or 2004 filing? If yes,
  - a. Provide the entity names and filer ID#s for each entity not included in 2003 or 2004 filer ID# being examined;
  - b. Provide the date that the change took place and was reported to USAC;
3. Has Intellicall Operator Systems submitted a revised Form 499-A for 2003 or 2004? If yes, provide a copy of the revised Form 499-A for 2003 or 2004 and the reasons for revisions.
4. Has Intellicall Operator Systems restated its 2002 or 2003 audited financial statements? If yes, provide a copy of the restated financial statements and indicate the impact of the restatement on the Form 499-A form.
5. Does Intellicall Operator Systems maintain its accounts and records in accordance with the FCC ARMIS Uniform Systems of Accounts ("USOA")?
6. Is Intellicall Operator Systems required to prepare a 10-K? If so, please provide.
7. Please indicate name and title of officer that signed the Forms 499-A filed for 2003 and 2004. (An officer is defined as a person who occupies a position specified in the corporate by laws and would typically be president, vice president for operations, comptroller, treasurer or comparable position.)
8. What is the estimated percentage used to determine uncollectibles for the carrier's carrier, contribution base and other revenues (non- telecommunications services)?
  - a. Do you maintain separate records for each category? If so, please describe in detail.
  - b. How do you allocate uncollectibles among local, interstate and international?

9. Did Intellicall Operator Systems make any out-of-period adjustments to the revenue data? If so, please describe in detail.
10. If Intellicall Operator Systems reports reseller revenues in Block 3 of Form 499-A provide the following:
  - a. Documented procedures to ensure that the Company only reports revenues from entities that reasonably would be expected to contribute to the universal service fund,
  - b. Provide the information requested in item #9 of the Data Collection Template.
11. Is Intellicall Operator Systems also a NECA pool company? If yes,
  - a. Is reporting the actual gross billed revenues reported to the NECA pool and not settlement revenues received from the pool?
  - b. For reporting of interstate and international revenues, does Intellicall Operator Systems use actual or good faith estimates in determining the percentage breakdown? Complete item #11 of Data Collection Template.
12. Does the Intellicall Operator Systems exclude taxes and any surcharges from revenues reported on Form 499-A?
13. Does Intellicall Operator Systems report revenues from subscriber line charges (SLC) and Federal presubscribed interexchange carrier revenues (PICCs) levied on end-users? If yes, complete item #12 of the Data Collection Template.
14. Does Intellicall Operator Systems bill in order to recover contributions to the universal service support mechanisms? If yes, how much was billed and where was it reported on Form 499-A?
15. If Intellicall Operator Systems believes it is exempt from contributing to the Universal Service Fund, provide an explanation describing why it believes it is exempt?



## EXHIBIT B: Data Collection Template

<u>ITEM #</u>	<u>REQUESTED INFORMATION</u>	<u>TEMPLATE PROVIDED</u>	<u>ITEM COMPLETED</u>
1.	Copy of Form 499-A for calendar year 2002 (filed April 1, 2003)		
2.	Copy of Form 499-A for calendar year 2003 (filed April 1, 2004)		
3.	If Intellicall Operator Systems submitted a revised Form 499-A for either 2003, 2004 or both, provide a copy of the revised Form 499-A, as applicable.		
4.	Procedural documentation (by way of memorandum and/or flowcharts) of the process by which the Form 499-A is populated, reviewed and approved.		
5.	Process documentation (by way of memorandum and/or flowcharts) of the manner in which the prepaid calling cards function.		
6.	<b>Using Template A:</b> For 2002 and 2003 - Map each of the Form 499-A line items to the G/L revenue accounts. This detail should include G/L account number, G/L account description and amount. Explain any Form 499-A line items that do not agree to the G/L account balances.	<b>Template A</b>	
7.	Reconciliation of total revenues as reported on Form 499-A line 419 column (a) to a Intellicall Operator Systems audited financial statements. Provide a copy of the audited financial statements. Provide explanations and support for reconciling items over \$ 100.	<b>Template B</b>	
8.	Provide a list of Intellicall Operator System's product and service offerings and map to the G/L accounts to which the related billings are recorded.	<b>Template C</b>	
9.	<b>Reseller Revenues –reported in Block 3.</b> If you answered 'Yes' to question #10 of the 499-		